

LAW OFFICES OF AMY N. TIRRE,
 A Professional Corporation
 AMY N. TIRRE, ESQ. #6523
 3715 Lakeside Drive, Suite A
 Reno, NV 89509
 (775) 828-0909 Telephone
 (775) 828-0914 Facsimile
 E-mail: amy@amytirrelaw.com

E-Filed: September 30, 2010

Attorney for Defendants Jo Anne Tomasiewicz,
 Gene E. and Patricia L. McClelland as Trustees of the McClelland Living Trust,
 and Duane E. and Johnnie M. Fleshman

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re:

Case No. BK-N-08-51131

CETUS MORTGAGE, LTD.,

Chapter 7

Debtor.

Adversary No. 10-05090

CYNTHIA MORREY; RICHARD W.
 EICHHORN; MICHAEL RHOADS, as
 General Partner for SPRINGVILLE
 INVESTORS IT GP and as General Partner
 for COUNTRY RHOADS ASSOCIATES
 LP; PAUL S. FEARS; STACEY NOLL
 FEARS; DEAN S. HAGEN as Trustee for
 HAGEN LIVING TRUST; IRENE J. HAGEN
 as Trustee for HAGEN LIVING TRUST;
 ELMER R. VACCHINA as Trustee for
 ELMER R. VACCHINA TRUST;
 WILLIAM H. WRIGHT as Trustee for
 WRIGHT FAMILY TRUST; ROSALIE M.
 WRIGHT as Trustee for WRIGHT FAMILY
 TRUST; STEVEN A. TUTTLE; NANCY R.
 TUTTLE; OPAL A. SMITH as Trustee of the
 survivor's trust under the LEONARD W.
 AND OPAL A. SMITH FAMILY TRUST;
 GEORGE M. DIXON; JANIS A. DIXON;
 ELSEY D. HARDEN as Trustee of HARDEN
 1992 FAMILY TRUST; MARIE
 JEANNE HARDEN as Trustee of HARDEN
 1992 FAMILY TRUST; MICHAEL
 BENNING; LORI BENNING; BARBARA D.
 BEAL as Trustee for BARBARA D.
 BEAL LIVING TRUST; HELEN L. NOLTE as

**DEFENDANTS JO ANNE
 TOMASIEWICZ, GENE E. McCLELLAND
 AND PATRICIA L. McCLELLAND AS
 TRUSTEES OF OTHE McCLELLAND
 LIVING TRUST AND DUANE E. AND
 JOHNNIE M. FLESHMAN'S ANSWER TO
 COMPLAINT FOR JUDICIAL
 FORECLOSURE, DECLARATORY
 RELIEF**

Hearing Date: N/A
 Hearing Time: N/A
 Est. Time Req'd: N/A

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Trustee for HELEN L. NOLTE LIVING TRUST; CARY P. YOUNG; ERIN M. YOUNG; PHILIP L. GREEN; DONNA M. GREEN; RAY P. HOGLAND as Trustee for 2002 HOGLAND TRUST; WILLIAM H. JEPHSON as Trustee for JEPHSON FAMILY TRUST; ELEANOR J. JEPHSON as Trustee for JEPHSON FAMILY TRUST; RANDALL R. RUCH as Trustee for SCHUYKILL VALLEY SPORTING GOODS, INC. PROFIT SHARING PLAN; GERALD WILLIAMS as Trustee for SCHUYKILL V ALLEY SPORTING GOODS, INC. PROFIT SHARING PLAN; JAY SCHAEFFER, VICTOR ALAN PERRY as Trustee for VICTOR ALAN PERRY, LLC DEFINED BENEFIT PENSION PLAN; and SHARLENE JONES as executor for IRENE S. K. CHUN (deceased).

Plaintiffs,

vs.

RONALD E. OSBORN; BRENT P. OSBORN; OSBORN DEVELOPMENT, CO., LLC, a Nevada limited liability company, RV & YACHT I, LLC, a Nevada limited liability company; BILL BOOTH; LA VONE BOOTH; GENE E. MCCLELLAND as Trustee for MCCLELLAND LIVING TRUST; PATRICIA L. MCCLELLAND as Trustee for MCCLELLAND LIVING TRUST; GEORGE C. SCHUMACHER; TERRY ANNE SCHUMACHER; DUANE E. FLESHMAN; JOHNNIE M. FLESHMAN; STACY L. DOUTRE as custodian for DEREK M. DOUTRE; RAJEN N. BHATT; GINO V. MOTL; JOANNE TOMASIEWICZ; PEGGY LAKEY; RODGER LAKEY; WILLIAM T. HIGGS; JUDYE. HIGGS; KELVINR. LAIRD; ROBERT J. FRICKE as Successor Trustee of the FRICKE 2001 FAMILY TRUST; DARLENE LUSTER; DEBRA LYNN HORTON; HAZEL M. SIMMONS;

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MARJORIE M. JONES; CHARLES E. SLAVIN as Trustee for SLAVIN FAMILY REVOCABLE TRUST; PATRICIA E. SLAVIN as Trustee for SLAVIN FAMILY REVOCABLE TRUST; PETER ALBERT JEPHSON; ETHEL G. JEPHSON; CHARLES G. GELTZ, JR.; LOA JEAN GELTZ; STEPHEN F. GIES; SHARON GIES; RICHARD P. ASH as Trustee for RICHARD P. AND MARY L. ASH 1990 FAMILY TRUST; MARY L. ASH as Trustee for RICHARD P. AND MARY L. ASH 1990 FAMILY TRUST; GEORGE M. DIXON as Trustee for DIXON ELECTRIC PENSION PLAN TRUST; JENNIFER HICKOK; VERONICA DORRIE as Trustee for VERONICA DORRIE TRUST; JEANNE W. KEITH; RAY K. KEITH; HENRY L. CLARK as Trustee for HENRY L. CLARK AND ROBERTA L. CLARK 1993 FAMILY TRUST; ROBERTA L. CLARK as Trustee for HENRY L. CLARK AND ROBERTA L. CLARK 1993 FAMILY TRUST; JENNIFER R. HICKOK; C/F JAMISON LEIGH LUNDEMO; CAROL E. PORTA as Trustee for CAROL R. PORTA REVOCABLE TRUST; GAYLE ROBINSON; MICHAEL JOHN PONTRELLI as Trustee for PONTRELLI FAMILY TRUST; NORMA JEAN PONTRELLI as Trustee for PONTRELLI FAMILY TRUST; JONATHAN EDWARD ARNOW as Trustee for TESSA ARNOW TRUST; CLYDE R. BROWN as Trustee for BROWN FAMILY TRUST; SHARAN L. BROWN as Trustee for BROWN FAMILY TRUST; CYNTHIA G. DAVIS as Trustee for SECONDED AMENDED CYNTHIA G. DAVIS LIVING TRUST DATED JULY 1, 2004; TRACE W. GEIL; MARY A. GIANNOTTI as Trustee for GIANNOTTI FAMILY BYPASS TRUST CREATED UNDER THE GIANNOTTI 1990 REVOCABLE TRUST DATED OCTOBER 23, 1990; BEVERLY WALLACE; LOIS G. ROBINSON; JOHN R. LINDELL as Trustee for LINDELL'S PAINTING SERVICE MONEY PURCHASE PENSION PLAN

1 AGREEMENT; BARBARA A. LINDELL as
2 Trustee for LINDELL' S PAINTING SERVICE
3 MONEY PURCHASE PENSION
4 PLAN AGREEMENT; SHERRI KEY as
5 Trustee for LINDELL'S PAINTING
6 SERVICE MONEY PURCHASE PENSION
7 PLAN AGREEMENT; ANGELIQUE
8 CLARK as Trustee for CETUS
9 MORTGAGE; and STOREY COUNTY,
10 NEVADA

11 Defendants.

12 Defendants Jo Anne Tomasiewicz, Gene E. and Patricia L. McClelland, in their capacity as
13 Trustees of the McClelland Living Trust, and Duane E. and Johnnie M. Fleshman (collectively
14 "Defendants"), by and through counsel, Law Offices of Amy N. Tirre, Esq. hereby admit, deny
15 and otherwise response to allegations contained within the Plaintiff's Complaint as follows:

16 **JURISDICTION AND VENUE**

17 1. Answering paragraphs 1, 2, and 3, Defendants admit the allegations contained
18 therein.

19 **PARTIES**

20 2. Answering paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,
21 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 45, 48, 49, 50, 52, 53,
22 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70 ,71 ,72 ,73, 74, 75, 76, 77, 78, 79,
23 80 ,81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95 and 96, Defendants are without
24 sufficient information or knowledge to form a belief as to the truth of the allegations contained
25 within those paragraphs and on that basis deny the same.

26 3. Answering paragraphs 42, 43, 46, 47, 97 and 98, Defendants admit the allegations
27 contained within those paragraphs.

28 4. Answering paragraph 51, Defendants deny that Joanne Tomasiewicz is a resident
of the State of Florida because she resides in the State of Illinois.

GENERAL ALLEGATIONS

5. Answering paragraph 99 of the Complaint, Defendants admit the allegations contained within that paragraph.

6. Answering paragraphs 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 119, 120, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144 and 145, Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained within those paragraphs and on that basis deny the same.

7. Answering paragraph 117 of the Complaint, Defendants Gene E. McClelland and Patricia L. McClelland, as Trustees of the McClelland Living Trust admit to holding a 20% beneficial interest and Duane E. Fleshman and Johnnie M. Fleshman admit to holding a 8% interest in the Deed of Trust recorded on April 18, 2008 as Document No. 108878. Defendants are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained within that paragraph and on that basis deny the same.

8. Answering paragraph 121 of the Complaint, Defendant JoAnne Tomasiewicz admits to holding a 78.95% interest in the Deed of Trust recorded on April 18, 2008 as Document No. 108880 since Gieno V. Motl passed away. Defendant Joanne Tomasiewicz denies that Gino V. Motl holds any interest in the Deed of Trust recorded on April 18, 2008 as Document No. 108880. Defendants are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained within that paragraph and on that basis deny the same.

FIRST CLAIM FOR RELIEF

9. Defendants hereby incorporate by reference the responses to paragraphs 1-145 of Plaintiff's Complaint with paragraphs 1-8 of this Answer.

10. Answering paragraphs 147, 148, 149, 150 and 151, Defendants are without

1 sufficient information or knowledge to form a belief as to the truth of the allegations contained
2 within those paragraphs and on that basis deny the same.

3 **SECOND CLAIM FOR RELIEF**

4 11. Defendants hereby incorporate by reference the responses to paragraphs 1-151 of
5 Plaintiff's Complaint with paragraphs 1-10 of this Answer.

6 12. Answering paragraphs 153, 154, 155, 156, 157, 158 and 159, Defendants are
7 without sufficient information or knowledge to form a belief as to the truth of the allegations
8 contained within those paragraphs and on that basis deny the same.
9

10 **THIRD CLAIM FOR RELIEF**

11 13. Defendants hereby incorporate by reference the responses to paragraphs 1-159 of
12 Plaintiff's Complaint with paragraphs 1-12 of this Answer.

13 14. Answering paragraphs 161, 162, 163, 164 and 165, Defendants are without
14 sufficient information or knowledge to form a belief as to the truth of the allegations contained
15 within those paragraphs and on that basis deny the same.
16

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 Plaintiffs' Complaint fails to state a claim against Defendants for which relief can be
20 granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22
23 Plaintiffs' claims are barred by the doctrine of equitable estoppel.

24 **THIRD AFFIRMATIVE DEFENSE**

25 Plaintiffs' claims are barred by the doctrine of waiver.
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27
28

FOURTH AFFIRMATIVE DEFENSE

The doctrine of unclean hands prevents any recovery by the Plaintiffs herein.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the statute of frauds.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages are caused by actions of a third-party and Defendants bear no liability.

EIGHTH AFFIRMATIVE DEFENSE

Pursuant to the provisions of Rule 11 of the Federal Rules of Civil Procedure, at the time of the filing of Defendants' answer, all possible affirmative defenses may not have been alleged inasmuch as insufficient facts and other relevant information may not have been available after reasonable inquiry, and therefore, Defendants reserve the right to amend this Answer to allege affirmative defenses if subsequent investigation warrants the same.

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1 WHEREFORE, Defendants, Jo Anne Tomasiewicz, Gene E. and Patricia L. McClelland as
2 Trustees of the McClelland Living Trust, and Duane E. and Johnnie M. Fleshman, pray that this
3 Court enter judgment in favor of Defendants and against Plaintiffs:

4 1. Declaring that the Deeds of Trust in which they hold an interest that were recorded
5 with the Storey County Recorder are valid and enforceable instruments;

6
7 2. For reasonable attorney's fees and costs associated in defending this action; and

8 3. For such other further relief as the Court deems just and proper.
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10 DATED September 30, 2010.

11 LAW OFFICES OF AMY N. TIRRE,
12 A Professional Corporation

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14 By: /s/ Amy N. Tirre
15 AMY N. TIRRE, ESQ.
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CERTIFICATE OF SERVICE

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of Law Offices of Amy N. Tirre, that I am over the age of 18 and not a party to the above-referenced case, and that on September 30, 2010, I served the **DEFENDANTS JO ANNE TOMASIEWICZ, GENE E. McCLELLAND AND PATRICIA L. McCLELLAND AS TRUSTEES OF OTHE McCLELLAND LIVING TRUST AND DUANE E. AND JOHNNIE M. FLESHMAN'S ANSWER TO COMPLAINT FOR JUDICIAL FORECLOSURE, DECLARATORY RELIEF** as indicated:

 x **BY NOTICE OF ELECTRONIC FILING:** through Electronic Case Filing System of the United States Bankruptcy Court, District of Nevada, to the individuals and/or entities at their email addresses as set forth below:

JEFFREY L. HARTMAN notices@bankruptcyreno.com

 BY HAND DELIVERY VIA COURIER: by causing hand delivery of the Document listed above via Legal Express to the persons at the addresses set forth below.

 BY MAIL: by placing the document listed above in a sealed envelope with Postage thereon fully prepaid in the United States Mail at Reno, Nevada, and addressed as set forth below. I am readily familiar with my office's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on September 30, 2010 with postage thereon fully prepaid in the ordinary course of business.

DATED this September 30, 2010.

/s/ Andrea Black
An Employee of Law Offices of Amy N. Tirre